OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

IN THE MATTER OF:
NORIT Americas, Inc.,
Pryor Plant,

RESPONDENT.

CASE NO. 07-010

CONSENT ORDER

The parties to this case, the Oklahoma Department of Environmental Quality ("DEQ") and NORIT Americas, Inc., ("Respondent"), agree to this Consent Order in order to resolve certain environmental compliance issues.

This Consent Order supersedes and closes Notice of Violation Nos. 01-AQN-049 and 02-AQN-009.

FINDINGS OF FACT

1. Respondent is a Georgia corporation. Respondent's corporate headquarters are located in Marshall, Texas.

2. Respondent owns and operates a carbon manufacturing facility ("Facility") in the Mid-America Industrial Park in Pryor, Mayes County, Oklahoma. The Standard Industrial Classification code for the Facility is 2819.

3. The Virgin Activated Carbon ("VAC") portion of the Facility was first constructed by the Carborundum Company, pursuant to Air Quality Permit No. 78-002-C, issued February 23, 1978. The original major equipment subject to the construction permit included a carbonizer (now referred to as the "Secondary Carbonizer"), the East Activation Furnace and West Activation Furnace. Each major piece of equipment had a

downstream afterburner to treat emissions from the equipment. On November 20, 1981, Carborundum Company was issued Air Quality Permit No. 78-002-O for the original VAC equipment. As permitted, the Secondary Carbonizer had two afterburners operating in parallel, one of which was added after initial construction but before the operating permit was issued. A November 20, 1981 OSDH Memorandum from Grant Marburger to John Drake discussing the permit tabulated emissions from the original equipment as follows:

	Emission Point	Allowable #/hr	Actual #/hr	Actual Ton/yr
Particulates				
	Activation Furnace AB	5.7	4.6	18.1
	Activation Furnace AB	5.7	4.6	18.1
	Secondary Carbonizer ABs	13.6	8.14	32.1
				68.3
SO2	Activation Furnace AB	31.2	1.4	5.4
	Activation Furnace AB	31.2	1.4	5.4
	Secondary Carbonizer ABs	72	29.1	114.6
				125.4
NOx	Activation Furnace AB	NA	7.4	29.2
	Activation Furnace AB	NA	7.4	29.2
	Secondary Carbonizer ABs	42	36	142
				200.4

The original VAC equipment predated any applicable Oklahoma or federal Prevention of Significant Deterioration ("PSD") requirements.

4. On March 28, 1994, ATOCHEM, Inc. was issued Air Quality Permit No. 88-105-O authorizing operations of the Primary Carbonizer at the Facility ("Permit"). The Permit authorized a feed rate to the Primary Carbonizer up to 18,000 lbs per hour ("lbs/hr"). The Permit set forth hourly emissions limitations for the process exhaust stack of the Primary Carbonizer/WHB (referred to as "Vent Stack 44104") for PM, SO_2, NO_x, CO and VOC of 17.50 lb/hr, 10.00 lb/hr, 11.25 lb/hr, 15.24 lb/hr and 2.11 lb/hr, respectively, as well as annual limitations of 76.65 TPY, 43.80 TPY, 49.27 TPY, 66.75 TPY, and 9.25 TPY, respectively.

5. Emissions from both the Primary Carbonizer and the Secondary Carbonizer are controlled by afterburners. The regulated particulate matter ("PM") limit is applicable at the emission point, which was after the afterburner for the Secondary Carbonizer and the waste heat boiler for the Primary Carbonizer.

6. On March 21st, March 23rd and March 24th, 2000, a compliance emission test was performed at the Facility. The test was conducted on the Primary Carbonizer process stack, Secondary Carbonizer stack and the West Activation Furnace stack. The test report for the Secondary Carbonizer showed PM emissions of 17.39 lb/hr, measured pursuant to Reference Method 5, at a solids process weight rate of 183.4 lb/min (not including process air or the condensable particulates).

7. On or about April 1, 1996, Respondent succeeded ATOCHEM, Inc. in ownership of the Facility by virtue of an asset purchase.

8. On June 5, 2000, DEQ received from NORIT the results from the March, 2000 performance test.

9. On November 14, 2000, DEQ conducted an inspection at the Facility. The inspection report noted that the March 21, 2000 test results for the Primary Carbonizer showed the Facility failed to meet the permit limits in Permit No. 88-105-O for PM, SO_2, and NO_x at the exhaust stack from the waste heat boiler.

10. On March 29, 2001, Respondent submitted to DEQ a self-disclosure relating to potential excess emissions of PM during stack tests conducted in 1997, 1998 and an engineering study conducted in 1999. DEQ contends the self-disclosure did not meet the criteria under the rule because Respondent did not promptly disclose the potential excess emissions, nor did Respondent take immediate action to correct potential exceedances.

11. On April 30, 2001, DEQ issued Notice of Violation No. 01-AQN-049 which was later replaced by Notice of Violation/Request for Information No. 02-AQN-009 ("NOV/RFI"), issued May 14, 2002, due to discrepancies in the point source identification. The NOV/RFI alleged the following violations:

- Respondent operated the Primary Carbonizer in violation of the particulate emissions in OAC 252:100-19-12, on May 28, 1997, February 5, 1998, August 25, 1999, and March 21, 2000.
- Respondent operated the West Activation Furnace in violation of the particulate emissions requirements in OAC 252:100-19-12 on June 11, 1997, August 30, 1999 and March 24, 2000;
- Respondent operated the East Activation Furnace in violation of the particulate emission standard set forth in OAC 252:100-19-12 on June 30, 1997, and February 10, 1998.

12. In the NOV/RFI, DEQ sought four categories of information: 1) "an analysis of the emissions increases/decreases that occurred up stream or down stream of the Primary Carbonizer due to the increased production capacity of the Facility," 2) "an analysis of any net emissions increases/decreases that occurred within three years of the

commencement of construction of the Primary Carbonizer," 3) "an analysis of the Best Available Control Technology ("BACT") as described in OAC 252:100-8-34," and 4) "an analysis of the toxic emissions by the addition of the Primary Carbonizer..." DEQ established a June 2, 2002, deadline to submit the above referenced information.

13. On June 3, 2002, DEQ granted an extension to Respondent to respond to the NOV by June 18, 2002 and the RFI by July 18, 2002.

14. On June 18, 2002, Respondent responded to the NOV portion of the NOV/RFI included was, an agreed timeframe to submit the further information regarding the PSD issues. Respondent disagreed with the allegations in the NOV/RFI.

15. On July 24, 2002, DEQ conducted a site visit at the Facility and met with Respondent concerning the NOV/RFI.

16. By letter dated September 3, 2002, DEQ disagreed with Respondent's June 18th response. DEQ maintained the following determinations: 1) that the carbonization and transporting/conveying of the feed to the Secondary Carbonizer are the only two processes attributable to the Primary Carbonizer for purposes of OAC 252:100-19; 2) that carbonization and transporting or conveying of the feed to the bucket elevators are the only two processes that occur at the Secondary Carbonizer, for purposes of OAC 252:100-1; 3) that there is one process in each of the Activation Furnaces. DEQ continued to assert that performance testing was necessary to establish compliance with OAC 252:100-19-12 and requested a performance test protocol and plan, as previously requested in NOV/RFI 02-AQN-009, within thirty (30) days.

17. By letters of October 9, 2002 and October 14, 2002, Respondent responded to DEQ's letter of September 3, 2002 taking the position that compliance was established by

existing test data on the equipment based upon its proposed interpretation of the particulate matter rules as applied to the VAC portion of the Facility. NORIT requested a meeting to discuss the issues in an attempt to resolve the matter.

18. On October 29, 2002, DEQ and Respondent met to discuss issues relating to the NOV/RFI. DEQ, again, required Respondent to develop a test plan and to test the Facility to demonstrate compliance with OAC 252:100-19 and required Respondent to develop a task list of action items discussed in the meeting with milestones, included the task and milestone of developing a compliance test plan. By letter dated November 6, 2002, NORIT submitted the requested task list and established a due date of December 18, 2002 for all information required in task 1 and 2. In the letter, NORIT requested that the issues concerning PM compliance be resolved, as well as Consent Order to be in place, prior to conducting compliance tests.

19. On December 18, 2002, Respondent requested an extension to submit information relating to task 1 and task 2 of the milestones mentioned in paragraph 18. DEQ granted the extension and Respondent was to submit the information by January 15, 2003. On January 15, 2003, Respondent submitted its response to task 1 and task 2. On February 4, 2003, Respondent submitted its response to task 3.

20. On May 15, 2003, DEQ sent Respondent a letter that rejected the test plan as insufficient to demonstrate compliance.

21. By letter dated September 11, 2003, NORIT proposed a compromise position to DEQ regarding an interpretation of the particulate matter rules as applied to the VAC portion of the Facility. The proposal included two industrial processes for the Secondary and Primary, where the process weight rate would be based upon the rate of coal plus

process air. Additionally, NORIT proposed that the PM limit for each Activator be based upon three industrial processes, where the process weight rate would include the rate of carbon, steam and process air. NORIT proposed permit limits based upon this application of Subchapter 19. DEQ accepts the proposed application of Subchapter 19 to the VAC equipment as set forth in NORIT's letter of September 11, 2003 (See Attachment, incorporated herein by reference.)

22. On June 9, 2004, Respondent submitted to DEQ a test protocol. The protocol was approved and testing was conducted in June and July, 2004 at the Facility pursuant to the protocol.

23. On February 16, 2005, Respondent submitted an evaluation of the data obtained during the testing done at its Facility. Respondent reported PM emissions of 12 lbs/hr from the Primary Carbonizer (limited to 17.5 lbs/hr pursuant to Permit 88-105-O), 6.44 lbs/hr from the Secondary Carbonizer (limited to 13.6 lb/hr pursuant to Permit No. 78-002), 56.19 lbs/hr from the East Activation Furnace and 49.60 lbs/hr from the West Activation Furnace (limited to 5.7 lbs/hr in Permit 78-002). PM emissions from the East and West Activation Furnaces exceeded the PM limits in OAC 252:100-19 during the test. Emissions from the Primary and Secondary Carbonizers were below applicable PM limits.

24. Furthermore, based upon Respondent's reported hourly SO_2 emissions measured during the June and July, 2004 test, the annual emissions at 8760 hours per year equates to:

Primary Carbonizer	31.84 tpy
Secondary Carbonizer	95.18 tpy
West Activation Furnace	136.92 tpy
East Activation Furnace	139.12 tpy

25. By letter of June 29, 2001, Respondent contended that the applicable PSD major source threshold limit at the time of the addition of the Primary Carbonizer was 250 tpy. Whether a 250 tpy or 100 tpy major source threshold was applicable to the Facility at the time of the Primary Carbonizer project is a moot point because the 2004 test data showed that the SO_2 and PM emissions from the VAC exceeded the higher 250 tons per year ("tpy") threshold prior to and after the installation of the Primary Carbonizer. As a result, a Prevention of Significant Deterioration ("PSD") review should have been conducted before the issuance of Permit No. 88-105-C.

26. On May 27, 2005, Respondent proposed, in writing, to install a waste heat recovery boiler and cyclone filter downstream of one of the afterburners on the Secondary Carbonizer while taking the other Secondary Carbonizer afterburner out of service. Additionally, Respondent proposed to install a waste heat boiler and cyclone filter to process the exhaust gases from both the East Activation Furnace afterburner and the West Activation Furnace afterburner.

27. On September 15, 2005, Respondent submitted to DEQ a BACT for control of PM from the proposed cyclone filter equipment. The submittal demonstrates that the proposed cyclone filters are the equivalent of BACT.

28. Further, on September 15, 2005, Respondent submitted a retroactive PSD applicability review for the Primary Carbonizer Project for SO_2. Respondent reported baseline actual emissions prior to the project of 363 tpy SO_2. Respondent proposed a prospective permit limit of 402.9 tpy of SO_2 from all VAC equipment combined, which would have kept the SO_2 net increase in emissions from the Primary Carbonizer project at less than the PSD significant level of 40 tpy. Respondent proposed to demonstrate

compliance with the proposed limit with data supportive of a sulfur material balance across the VAC plant as set forth in the September 15, 2005 submittal. In a meeting on November 8, 2005, DEQ informed NORIT that it did not accept the applicability review and required NORIT to submit a top down BACT analysis for SO_2.

29. By letter dated March 8, 2006, Respondent submitted the top down BACT for SO_2. The BACT review concluded all considered controls resulted in costs that were economically unreasonable, and that no controls constituted BACT for SO_2. DEQ accepts NORIT's submittal as a demonstration that no controls constituted BACT for SO_2.

30. Respondent and the DEQ agree that it is beneficial to resolve all of these matters promptly and by agreement.

31. Respondent and the DEQ waive the filing of a petition or other pleading, and Respondent waives the right to a hearing.

CONCLUSIONS OF LAW

32. The DEQ has regulatory jurisdiction and authority in this matter, and Respondent is subject to the jurisdiction and authority of the DEQ under Oklahoma law [27A Okla. Statutes (O.S.) §§ 2-5-101 – 2-5-118].

33. Respondent and the DEQ are authorized by 75 O.S. § 309(E) and 27A O.S. § 2-3-506(B) to resolve this matter by agreement.

34. Oklahoma Administrative Code 252:100-8-1.3, **Duty to Comply,** states:

> (a) An owner or operator who applies for a permit or authorization, upon notification of coverage, shall be bound by the terms and conditions therein.

(b) An owner or operator who violates any condition of a permit or authorization is subject to enforcement under the Oklahoma Clean Air Act.

35. OAC 252:100-19-12, "Allowable Particulate Matter Emission Rates from Directly Fired Fuel-Burning Units and Industrial Processes", is applicable to the Primary Carbonizer, Secondary Carbonizer, East Activation Furnace and West Activation Furnace.

36. OAC 252:100-19-12 states, in part, that "the emission of particulate matter from any new or existing directly fired fuel-burning unit or from any emission point in an industrial process shall not exceed the limits specified in Appendix G. Respondent operated the West Activation Furnace and the East Activation Furnace in violation of the particulate emission standard as described in Paragraph 11 above.

37. The addition of the Primary Carbonizer would have been subject to PSD review if the net increase of any pollutant as a result of the modification exceeded "significant" levels. (see current definition of "Major Stationary Source" and "Major Modification" in OAC 252:100-8-31; formerly rule 1.4.4(b)(1) and (2) of the Oklahoma Air Pollution Control Regulations.) "Significant" levels are defined in OAC 252:100-8-31 (formerly Rule 1.4.(b)(22)), for NO_x, SO_2, PM and PM_{10} to be 40 TPY, 40 TPY, 25 TPY and 15 TPY, respectively. If prior to a modification, the Facility had emissions of any criteria pollutant in excess of 100 TPY for the 29 listed facilities, and 250 TPY for all others (see Section (c) of current definition of Major Stationary Source in OAC 252:100-8-31, formerly Rule 1.4.4(b)(1)(c)), the Facility would have been considered a Major Stationary Source.

38. The Facility exceeded both the 100 tpy and 250 tpy thresholds for PM and SO_2 as described in Paragraph 25 above.

39. "Major Modification" means "any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant subject to regulation."

40. "Significant" means "in reference to a new emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

SO_2	40 tpy
PM	25 tpy

The installation of the Primary Carbonizer was a major modification with a significant net emissions increase of SO_2 and PM for purposes of PSD as described in Paragraph 22 and 23 above.

ORDER

41. Based on the above paragraphs, Respondent and the DEQ agree, and it is ordered by the Executive Director as follows:

A. Within one hundred twenty (120) days of the effective date of this Consent Order, Respondent shall submit a PSD application and amendment to its Title V application. The Title V permit application amendment shall contain proposed PM permit equipment limits for the Primary Carbonizer, Secondary Carbonizer and Activation Furnaces consistent with this Consent Order. Respondent shall timely respond to any notice of deficiency (NODs) regarding such submittal.

B. Respondent shall install cyclone filters on the Secondary Carbonizer, East Activation Furnace and the West Activation Furnace as proposed and approved

by DEQ. Installation of the cyclones shall be completed on or before ninety (90) days after the effective date of this Consent Order for the Secondary and by December 31, 2008 for the activation furnaces. Within one hundred eighty (180) days after installation of all cyclones required by this Order is completed, Respondent shall conduct performance testing for PM on the installed cyclone filters.

C. At least thirty (30) days prior to the above-mentioned performance test, Respondent shall submit to the DEQ a written pre-test plan for the Director's approval. Within sixty (60) days after the completion of the performance test, Respondent shall submit the results to the DEQ.

42. The Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 *et seq.* authorizes the DEQ to seek penalties of up to Ten Thousand Dollars ($10,000.00) per day for violation of the Act and the associated rules. Based on the facts and circumstances of this case, DEQ assesses a total penalty of One Hundred Fifteen Thousand Dollars ($115,000.00). Respondent agrees that, within 60 days of the effective date of this Consent Order, Respondent will pay that amount to the DEQ. Payment shall be by check or money order payable to the Oklahoma Department of Environmental Quality (or DEQ), showing the Case Number of this Consent Order, and delivered to:

Accounts Receivable
Financial & Human Resources Management
Department of Environmental Quality
P.O. Box 2036
Oklahoma City, OK 73101-2036

43. If Respondent fails to comply with this Consent Order, Respondent agrees to pay the DEQ an additional penalty of One Thousand Dollars ($1,000.00) for each day of non-

compliance with this Consent Order. If the DEQ notifies Respondent that Respondent is not in compliance with this Consent Order and that an additional penalty is being assessed, Respondent may request a hearing to contest the finding of noncompliance. The notification from the DEQ will specify how to request a hearing.

44. If Respondent fails to pay any penalty, the DEQ may bring a separate action for collection of the penalty in District Court. An action by the DEQ for the collection of a penalty does not affect Respondent's duty to complete the tasks required by this Consent Order.

GENERAL PROVISIONS

45. Respondent agrees to perform the requirements of this Consent Order within the time frames specified unless performance is prevented or delayed by events which constitute a "force majeure". For purposes of this Consent Order, a force majeure event is defined as: any event arising from causes beyond the reasonable control of Respondent or Respondent's contractors, subcontractors or laboratories which delays or prevents the performance of any obligation under this Consent Order. Examples are vandalism; fire; flood; labor disputes or strikes; weather conditions which prevent or seriously impair construction activities; civil disorder or unrest; and "acts of God". Force majeure events do *not* include increased costs of performance of the tasks agreed to in this Consent Order, or changed economic circumstances. Respondent must notify the DEQ in writing within fifteen (15) days after Respondent knows or should have known of a force majeure event that will or is anticipated to cause a delay in achieving compliance with any requirement of this Consent Order. Failure to submit notification within fifteen (15) days waives the right to claim force majeure.

46. No informal advice, guidance, suggestions or comments by employees of the DEQ regarding reports, plans, specifications, schedules, and other writings relieve or modify Respondent's obligation to obtain written approval by the DEQ, when required by this Consent Order.

47. Respondent agrees to allow agents of the DEQ entry onto the above-described property, at reasonable times and without advance notice, for the purposes of inspecting, sampling, testing, records review and other authorized activities to assess compliance with Oklahoma statutes and rules this Consent Order. If Respondent is required to sample or test, Respondent agrees to give the DEQ reasonable notice of sampling or testing date and time and allow the DEQ to observe and/or split-sample.

48. As used in this Consent Order, an "approvable" submission to the DEQ will be considered a final submission. That is, all preliminary discussions between the DEQ and Respondent regarding the requirements of a submission must be concluded prior to the date the submission is due so that the submission will be approvable as submitted. If the submission is not submitted in an approvable form by its due date, the submission will be considered delinquent and Respondent will be subject to the stipulated penalties described in this Consent Order.

49. Unless otherwise specified, any report, notice or other communication required under this Consent Order must be in writing and must be sent to:

For the Department of Environmental Quality:

Eddie Terrill, Director
Air Quality Division
P.O. Box 1677
Oklahoma City, OK 73101-1677

With Copies to:

Kendal Cody Stegmann, Supervising Attorney
Office of General Counsel
P.O. Box 1677
Oklahoma City, OK 73101-1677

Rhonda Jeffries, Environmental Programs Manager
Regional Office at Tulsa
3105 East Skelly Drive, Suite 200
Tulsa, OK 74105-6370

For Respondent:

Chris Soap
Plant Manager, Pryor Facility
NORIT Americas, Inc.
MAIP
1432 Sixth Street
Pryor, OK 74361

Curtis Miles
Manager of Regulatory Affairs
NORIT Americas, Inc.
3200 University Avenue
Marshall, TX 75671

With Copies to:

Russell W. Kroll, Esq.
Doerner, Saunders, Daniel & Anderson, L.L.P.
320 South Boston Avenue, Suite 500
Tulsa, OK 74103-3725

50. This Consent Order is enforceable as a final order of the Executive Director of the DEQ. The DEQ will retain jurisdiction of this matter for the purposes of interpreting, implementing and enforcing the terms and conditions of this Consent Order and for the purpose of resolving disputes relating to this Consent Order.

51. Nothing in this Consent Order limits any right DEQ may have to take enforcement action for violations discovered or occurring after the effective date of this Consent Order.

52. Nothing in this Consent Order relieves Respondent of its obligation to comply with all applicable federal, state and local statutes, rules and ordinances. Respondent and the DEQ agree that the provisions of this Consent Order should be considered severable, and should a court of competent jurisdiction find any provisions to be inconsistent with state or federal law and therefore unenforceable, the remaining provisions will remain in full force and effect.

53. The provisions of this Consent Order apply to and are binding upon Respondent and the DEQ and their officers, directors, employees, agents, successors and assigns. No change in the ownership or corporate status of Respondent will alter Respondent's responsibilities under this Consent Order.

54. Compliance with the terms and conditions of this Consent Order fully satisfies Respondent's liability and any liability of prior owners of the Facility to the DEQ for all allegations of noncompliance in this Consent Order. Upon satisfaction of this Consent Order, the DEQ agrees to waive any right to obtain any other remedy, sanction or relief that might otherwise be available to address the issues of noncompliance in this Consent Order.

55. This Consent Order is for the purpose of settlement, and neither the fact that Respondent and the DEQ have entered into this Consent Order, nor the Findings of Fact and Conclusions of Law, shall be used for any purpose in this or any other proceeding except the enforcement by the parties of this Consent Order. As to others who are not

parties, nothing contained in this Consent Order is an admission by Respondent of the Findings of Fact or Conclusions of Law, and entry into this Consent Order is not an admission by Respondent of liability for conditions at or near the facility or a waiver of any right, cause of action or defense Respondent otherwise has. Participation in this Consent Order by Respondent is not intended by the parties to be and shall not be an admission of any of the Findings of Fact or Conclusions of Law contained herein.

56. Respondent and the DEQ agree that the venue of any action in district court for the purposes of interpretation, implementation and enforcement of this Consent Order will be Oklahoma County, Oklahoma.

57. The requirements of this Consent Order will be considered satisfied and this Consent Order terminated when Respondent receives written notice from the DEQ that Respondent has demonstrated that all the terms of the Consent Order have been completed to the satisfaction of the DEQ, and that any assessed penalty has been paid.

58. The parties may amend this Consent Order by mutual consent. Such amendments must be in writing and the effective date of the amendments will be the date on which they are filed in this administrative proceeding.

59. The individuals signing this Consent Order certify that they are authorized to sign it and to legally bind the parties they represent.

60. This Consent Order becomes effective on the date of the later of the two signatures below.

Dated this 25th day of July, 2007.

FOR RESPONDENT:

CHRIS SOAP
PLANT MANAGER

Dated this 6th day of August 2007.

OKLAHOMA DEPARTMENT
OF ENVIRONMENTAL QUALITY:

STEVEN A. THOMPSON
EXECUTIVE DIRECTOR

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